

REMARKS

This is a full and timely response to the outstanding Final Office Action mailed August 27, 2008. The Applicant traverses the rejections to claims 1-4 and 6-21. Reconsideration and allowance of the subject application and presently pending claims 1-4 and 6-21 is respectfully requested.

I. Response to Claim Rejections based on Anticipation

In the Office Action, claims 17 and 19-20 are preliminarily rejected under 35 USC§102(b) as being anticipated by U.S. Patent No. 5,992,288 to Barnes. For a proper rejection of a claim under 35 USC§102(b), the cited reference must disclose all elements/features/steps of the claim. See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

A. Claim 17

Claim 17 is presently written as:

A method of countering an airborne threat to an aircraft, comprising the steps of:
determining threat information about said airborne threat;
transmitting said threat information to a remote device;
transmitting source information to said remote device;
receiving instructions to deploy a countermeasure ***selected by said remote device***, as a result of said steps of determining threat information, transmitting said threat information, and transmitting said source information, wherein said selected countermeasure is presently available; and
deploying said selected countermeasure,
wherein said threat information and said source information is collectively referred to as a track file.

(Emphasis added).

The rejection of claim 17 under §102(b) as being anticipated by Barnes is in error.

Claim 17 requires, in part, “transmitting said threat information to a remote device ... [the remote device selecting a countermeasure for deployment].” The use of the term “remote” in the claims does not simply connote a different device, but a device in a different location. For example, in one embodiment described in the application filed, the ACS 12 aboard an aircraft transmits threat information to a remote device [CCMS 102] in an airport and the CCMS 102 selected a countermeasure for deployment. In the final office action, the Examiner appears to state in paragraph 3 that “determining threat information” is performed by the “Zone Target Table 40” (the only threat information determining element in Col. 4, lines 51-55 identified by the Examiner). According to the Examiner, in paragraph 4 of the Final Office Action, the remote device is TIC in combination with the Target/Weapons Pairing Knowledge Database 30. Nothing in Barnes suggests the TIC algorithm and the databases 30, 40 are remote from one another. From all appearances, they are located in the same memory location of a single computer system and operate on a single device. Thus, Barnes cannot be said to disclose the requirements of claim 17 as they relate to a process happening in one location and sent to a remote device and another process happening at the remote device.

B. Claims 18-20

The Applicant respectfully submits that since claims 18-20 depend on independent claim 17, claims 18-20 contain all limitations of independent claim 17. Since independent claim 17 should be allowed, as argued above, pending dependent claims 18-20 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

In the Office Action, claim 1 is rejected under 35 USC§102(e) as being anticipated by U.S. Patent No. 6,980,152 to Steadman et al.

C. **Claim 1**

Claim 1 is presently written as:

A system for countering an airborne threat to an aircraft, comprising:
at least one aircraft having an airborne countermeasures system (ACS) capable of controlling deployment of countermeasures located on said aircraft; and
a central countermeasures management system (CCMS) capable of communicating with said ACS *to control said ACS* in deployment of said countermeasures located on said aircraft.

(Emphasis added).

The rejection of claim 1 under 35 USC§102(e) as being anticipated by Steadman is in error. Claim 1 requires, in part, "a CCMS capable of communicating with said ACS to control said ACS." Steadman, et al. discloses cueing the ACS, but it does not mention exerting control over the ACS. For instance, nothing in the disclosure seems to suggest the signal processor 116 determines which ACS countermeasure to deploy or which countermeasures on the ACS is available. Nothing in the disclosure of Steadman suggests the ACS disclosed therein is anything less than autonomous, determining how to respond to the cue without surrendering control to the surveillance system 100. Therefore, because Steadman fails to teach all requirements of claim 1, it cannot be the basis of a rejection under §102(e) and the Examiner's rejection is in error. Accordingly, Applicant respectfully requests withdrawal of the rejection.

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II. Response To Claim Rejections Based On Obviousness

In the Office Action, Claims 7 and 10-16 are rejected under 35 USC§103(a) as being unpatentable over Barnes in view of U.S. Patent No. 6,467,388 to Malakatas. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., In re Dow Chemical, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988), and In re Keller, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

A. Claim 7

Claim 7 is presently written as:

A method of countering an airborne threat to an aircraft, comprising the steps of:
receiving threat information about said airborne threat from a remote source;
receiving source information about said remote source;
determining a type of airborne threat from said received threat information and said received source information;
selecting a countermeasure that is presently available by said remote source, wherein said countermeasure is capable of *detering said airborne threat from inflicting damage to said aircraft*; and
instructing said remote source to deploy said selected countermeasure that is presently available.

(Emphasis added).

The rejection of claims 7 and 10-16 under 35 USC§103(a) as being unpatentable over Barnes in view of Malakatas is in error. The rejection of claims 7 and 10-16 relies on the aforementioned anticipation rejection of claim 17 that is in error. The remote elements for threat information and countermeasure selection required in claim 7 appear to be contained in the same computer and, arguably, in the same memory device in Barnes. Thus, the 'remote'

requirement of the claims is not satisfied by Barnes. Further, neither of the references disclose a system for deterring an airborne threat from inflicting damage to an aircraft, as required for claim 7. Therefore, Barnes in view of Malakatas fails to disclose every requirement of the claimed invention.

B. Claims 10-16

The Applicant respectfully submits that since claims 10-16 depend on independent claim 7, claims 10-16 contain all limitations of independent claim 7. Since independent claim 7 should be allowed, as argued above, pending dependent claims 10-16 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

Claims 1-6 and 21 are rejected under 35 USC§103(a) as being unpatentable over Malakatas in view of U.S. Publication No. 2003/0033059 to Ebert.

C. Claim 1

Claim 1 is presently written as:

A system for countering an airborne threat to an aircraft, comprising:
at least one aircraft having an airborne countermeasures system (ACS) capable of controlling deployment of countermeasures located on said aircraft; and
a central countermeasures management system (CCMS) capable of communicating with said ACS to control said ACS in deployment of said countermeasures located on said aircraft.

(Emphasis added).

The rejection of claim 1 under §103(a) as being unpatentable over Malakatas in view of Ebert is in error. Claim 1 requires, in part, “a central countermeasures management system

(CCMS) capable of communicating with said ACS to control said ACS in deployment of said countermeasures located on said aircraft.” Malakatas fails to teach this feature of claim 1. The passage of Malakatas that is cited by the Examiner, Col. 3, Lines 23-30 fails to provide any teachings of, “a central countermeasures management system,” as claim 1 requires, or any teachings at all of a system capable of managing countermeasures. As stated previously, one having ordinary skill in the art would understand that “a central countermeasures management system” includes substantially more than what the Examiner interprets in the Office Action. Specifically, central presupposes a single location. As disclosed at Col. 2, lines 50-55, “In spite of their coordinated activities, the firing units are *equal and autonomous*. If one of the firing units fails, ... functionality basically remains the same. Since no firing units is a “master” unit, there can be no failure of a “master” unit.” The equal and autonomous firing units are specifically designed without a ‘central system’, thus Malakatas lacks and teaches away from a ‘central countermeasures management system’ and the Examiner does not dispute Ebert lacks the same.

Further, Ebert does not teach the required remote weapons system. The Examiner discloses five elements that make up this ‘remote system’ and all of them are aboard the airplane. There is no system on the ground or in another vehicle that would make the airplane weapons system remote. Rather, the airplane contains and controls a local weapons system. As the Examiner admits Malakatas lacks this element and Ebert fails to overcome the shortcomings of Malakatas, and for other reasons as argued above, the Malakatas in view of Ebert fails to disclose every element of the claimed invention.

Therefore, for at least this reason, the rejection of claim 1 as unpatentable over Malakatas in view of Ebert is in error. Accordingly, Applicant respectfully requests withdrawal of the rejection.

D. Claims 2-4

Claims 2-4 are rejection under 35 USC§103(a) as being unpatentable over Steadman in view of Barnes. Applicant respectfully submits that since claims 2-4 depend on independent claim 1, claims 2-4 contain all limitations of independent claim 1. Since independent claim 1 should be allowed, as argued above, pending dependent claims 2-4 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

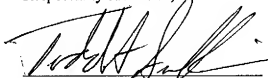
III. Response to Objections Based on Claim Dependencies

The Applicant thanks the Examiner for determining that claims 8-9 and 18 are of allowable subject matter. These claims have been rewritten as independent claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 1-4 and 6-21 are in condition for allowance. Favorable reconsideration and allowance of the present application and the presently pending claims are hereby courteously requested. If in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (603) 668-1400.

Respectfully submitted,

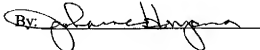


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I hereby certify that this correspondence is being deposited with the United States Patent Office via the electronic filing procedure on October 2, 2008.

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